

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SKYLINE DESIGN, INC.,)	
)	
Plaintiff,)	Case No. _____
)	
-vs-)	Honorable _____
)	
)	
EXACT FINISH INCORPORATED,)	
)	
Defendant.)	JURY TRIAL DEMANDED

COMPLAINT

GIST OF ACTION

This Complaint asserts a copyright infringement claim against Exact Finish Incorporated (“EFI”), the named Defendant. Specifically, EFI is infringing the copyright that Plaintiff Skyline Design, Inc. (“Skyline”) holds for an architectural glass work commonly referred to as “Sateen.” Based on EFI’s infringement, Skyline is entitled to damages and the other relief sought in this Complaint.

JURISDICTION AND VENUE

1. An action for copyright infringement arises under 17 U.S.C. §§ 501, *et seq.* Jurisdiction for such a claim is appropriate under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper under 28 U.S.C. §§ 1391(b), (c), and 1400(a).

THE PARTIES

2. Skyline is a corporation organized under the laws of the State of Illinois. Its principal place of business is located at 1240 North Homan Avenue, Chicago, Illinois 60651.

3. Skyline designs, manufactures, and sells architectural glass that bears original and aesthetic etched designs created by Skyline. Skyline expends considerable resources to develop

and create its designs and is known internationally for them. Because of the unique nature of many of its works, Skyline expends considerable resources protecting the intellectual property rights it has in its designs, including by, in addition to other things, registering the non-functional and artistic elements of its decorative glass works with the United States Copyright Office.

4. Defendant EFI is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 500 Indeneer Drive, Suite 4, Kernersville, North Carolina 27284. It is also in the business of selling decorative architectural glass. EFI does business in this State and District, including by, both currently and in the past, conducting marketing and sales activities here.

FACTS

Skyline's Copyright

5. In 2003, Skyline created an original and distinctive decorative etching design for architectural glass entitled "Sateen." On May 9, 2006, U.S. Copyright Registration No. VA 1-364-683 ("Skyline's Copyright") registered to Skyline for Sateen. A true and correct copy of the valid Certificate of Registration of Skyline's Copyright is attached as Exhibit A.

6. A deposit copy of Sateen was filed with the U. S. Copyright Office and is included in Exhibit A. Several different magnifications of Sateen were also included in the deposit copy filed with the U.S. Copyright Office.

7. Sateen is an original and creative arrangement of patterned, ornamental lines of varying thicknesses and distances from each other, juxtaposed on both sides of glass yet slightly "off" from each other. The proportionality and unpredictable variability of these ornamental lines and their relationship to one another constitute creative and original aspects of the work

protected by Skyline's Copyright and were selected, arranged, and created entirely on the basis of artistic judgment and to serve purely aesthetic purposes.

8. Skyline is the sole and exclusive owner of all right, title, and interest in, and to, the Skyline Copyright and the work protected thereby. Skyline sells Sateen glass incorporating the decorative design protected by Skyline's Copyright at various magnifications, which is a standard industry practice. Skyline typically provides 12" x 12" samples of its designs in connection with its sales efforts. A true and correct copy of photographs of Sateen samples at different magnifications is attached as Exhibit B.

EFI's Infringing Activities

9. Upon investigation and information, EFI imports decorative etched architectural glass from, but not limited to, non-party OmniDecor S.p.A. ("OmniDecor"), a glass company located in Erba, Italy. Certain designs that EFI provides to the public reflect unauthorized copies of Skyline's Copyright, which OmniDecor and others have wrongfully copied.

10. Upon information and belief and based on investigation, EFI has imported, marketed, displayed, distributed, offered for sale and/or sold, and continues to import, market, display, distribute, offer for sale, and/or sell decorative etched architectural glass that incorporates unauthorized copies of Skyline's Copyright. Such glass includes, but is not limited to, glass marketed and sold by EFI as the "Rain" and "Bi Rain" patterns. EFI promotes this architectural glass by, among other things, advertising this glass for sale on its website. A true and accurate copy of EFI's "SoftEtch" brochure, which advertises Rain and Bi Rain at page 2, is attached Exhibit C and also available at <http://www.efi-us.com/wp-content/uploads/2014/01/SoftEtch-Brochure.pdf> (last visited Jan. 23, 2015). EFI's infringing

glass includes, but is not limited to, marketing samples and installation glass imported, made, created, marketed, displayed, distributed, offered for sale, and/or sold by EFI.

11. Neither EFI (nor OmniDecor) is an authorized dealer for Skyline. Neither has ever been authorized to import (or export to the U.S.), copy, display, distribute, offer for sale, or sell products with designs protected by Skyline's Copyright.

12. Skyline's Copyright is well-known to customers and other manufacturers and distributors of decorative etched architectural glass, nationally and internationally, including, on investigation and information, EFI and OmniDecor. Indeed, since 2003, Skyline has widely disseminated and publicized Sateen, including through or by:

- a. interstate and international sales;
- b. interstate and international advertisement on its website, in trade publications, and in print advertisements;
- c. displaying samples at trade shows;
- d. placing Sateen samples in publicly-accessible architecture and design libraries that can be and are consulted by other manufacturers and distributors of decorative etched architectural glass;
- e. distributing samples of Sateen to architecture and design firms, general contractors, and glazing subcontractors; and
- f. showing samples of Sateen to manufacturers and glass distributors in direct presentations, such as during competitive bidding on contracts.

13. Skyline is susceptible to lost sales of Sateen from EFI's infringing products because of the channels of trade through which Skyline's and EFI's products are sold. Skyline has placed a notice of copyright on published images of etched architectural glass bearing the

Sateen name. Upon information and belief, EFI has known of and had access to installations, samples, and/or images of Sateen at least in part as a result of Skyline's widespread dissemination and publication thereof, including publication by means of the internet.

14. Upon information and belief, employees and/or other agents of EFI, acting on EFI's behalf, have attended trade shows where Skyline was displaying Sateen samples. Upon information and belief, employees and/or other agents of EFI, acting on EFI's behalf, have visited publicly-accessible architecture and design libraries in which Skyline maintained samples of Sateen. OmniDecor also has had notice of Skyline's Copyright in this same way and based on its own similar activities and also from previous visits to Skyline's headquarters. There is also general access to Sateen in buildings and other spaces that are open to the public.

EFI's Wrongful Infringement

15. EFI has wrongfully distributed glass that incorporates unauthorized copies of the Skyline Copyright, including, but not exclusively, by offering for sale or selling the Rain and Bi Rain patterns, or both. Rain and Bi Rain are so similar to Sateen and the work protected by the Skyline Copyright that they could not have been created independently of knowledge of Sateen.

16. Sateen was created entirely on the basis of artistic judgment and to serve purely aesthetic purposes. The Rain and Bi Rain patterns are substantially similar to the ornamental pattern of lines of varying thickness and distance from each other that constitutes original aspects of Sateen and the work protected by Skyline's Copyright. The substantial similarity is even more striking when compared at varying magnifications. EFI's actions constitute copyright infringement.

The Validity of Skyline's Copyright

17. Because of the uniqueness and desirability of the Sateen design, Skyline's Copyright has been infringed by others. Specifically, Skyline previously filed a complaint against another seller of Rain and Bi Rain. In that suit, Skyline alleged that the company in that case infringed Skyline's Copyright by wrongfully distributing infringing architectural glass, including the Rain and Bi Rain patterns made by OmniDecor.

18. In ruling in Skyline's favor on a motion to dismiss and for judgment on the pleadings, the Court found that:

- a. The artistic work of Sateen possesses more than the required degree of creativity to be copyrightable. *See Skyline Design Inc. v. McGrory Glass, Inc.*, No. 1:12-cv-10198, 2014 WL 258564, at *7-8 (N.D. Ill. Jan. 23, 2014).
- b. The scope of the Skyline Copyright includes double-sided renderings of Sateen. *Id.* at 11-12.
- c. An ordinary observer looking at both Sateen and the Rain patterns on etched architectural glass could consider them substantially similar. *Id.* at 14.
- d. With regard to the double-sided version of Sateen and the Bi Rain pattern, they are "nearly identical." *Id.*

19. In the interests of comity and economy, these rulings should apply with equal force here in the event that EFI raises similar arguments.

STATED CAUSE OF ACTION:
INFRINGEMENT OF U.S. COPYRIGHT REGISTRATION VA 1-364-683

20. Skyline alleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

21. EFI has infringed the Skyline Copyright by, at least, making, displaying, distributing, importing, offering for sale, and/or selling decorative etched architectural glass in the United States including but not limited to the Rain and Bi Rain patterns.

22. EFI will continue infringing Skyline's Copyright unless enjoined by this Court.

23. As a result of EFI's acts, Skyline has been damaged and will continue to be damaged irreparably.

24. EFI's infringement of the Skyline Copyright has been knowing and willful.

25. EFI's infringement of the Skyline Copyright has damaged Skyline in an amount that is unknown and cannot at the present time be fully ascertained.

DEMAND FOR JURY TRIAL

Skyline hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Skyline, prays for entry of judgment ordering:

- (A) An injunction against EFI and its parent companies, subsidiaries, related companies, and all persons acting in concert or participation with EFI, or persons acting or purporting to act on its behalf, including, but not limited to its officers, directors, partners, owners, agents, representatives, employees, attorneys, successors, and assigns, and any and all persons acting in concert or privity with it, from infringing Skyline's Copyright as provided in 17 U.S.C. § 502;

- (B) EFI, its agents, employees, successors and assigns to deliver under oath, for impoundment during the pendency of this action, all articles alleged to infringe Skyline's copyrighted architectural glass etching design called Sateen;
- (C) EFI, its agents, employees, successors and assigns to deliver under oath for destruction all infringing blueprints, photocopies, plans, and other means for making infringing copies;
- (D) A finding that EFI has infringed Skyline's Copyright;
- (E) An award to Skyline of statutory damages pursuant to 17 U.S.C. § 504(c) for each and every act of infringement of Skyline's Copyright in an amount to be set by the Court, including but not limited to, attorneys' fees, and a finding that the infringement by EFI was committed willfully and awarding Skyline a sum of \$150,000 for each willful infringement, as provided under 17 U.S.C. § 504(c)(2), or in the alternative, an accounting and award of damages resulting from the infringement of the Skyline's Copyright by EFI as provided for in 17 U.S.C. §504(b), among other relief;
- (F) An award to Skyline of interest on all damages incurred, including any applicable prejudgment and/or post-judgment interest;
- (G) Such other and further relief against EFI in favor of Skyline as this Court deems fair and just.

Date: January 23, 2015

Respectfully submitted,

SKYLINE DESIGN, INC.

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